

ESTTA Tracking number: **ESTTA95785**

Filing date: **08/22/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Johnson & Johnson
Granted to Date of previous extension	08/23/2006
Address	One Johnson & Johnson Plaza New Brunswick, NJ 08933-7001 UNITED STATES
Attorney information	Mary Pat A. Weyback Drinker Biddle & Reath LLP 1500 K Street, N.W., Suite 1100 Washington, DC 20005-1209 UNITED STATES MaryPat.Weyback@dbr.com, Andrea.Engel@dbr.com, Ted.Haussman@dbr.com Phone:202-842-8800

Applicant Information

Application No	76635772	Publication date	04/25/2006
Opposition Filing Date	08/22/2006	Opposition Period Ends	08/23/2006
Applicant	Brice, Michael F. 6 Whitney Lane Woodbury, NY 11796 UNITED STATES		

Goods/Services Affected by Opposition

Class 021. All goods and services in the class are opposed, namely: TOOTHBRUSHES

Attachments	BRICE.pdf (3 pages)(107078 bytes)
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Signature	/Ted Haussman/
Name	Ted Haussman
Date	08/22/2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Ser. No. 76/635,772 HEALTHY TOOTHBRUSH;
Published April 25, 2006

JOHNSON & JOHNSON, :

Opposer, :

v. : Opposition No. 91-_____

MICHAEL F. BRICE, :

Applicant. :

NOTICE OF OPPOSITION

Johnson & Johnson, a New Jersey corporation, having a principal place of business at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933-7001 (“Opposer”), believes that it will be damaged by the registration of Ser. No. 76/635,772 – HEALTHY TOOTHBRUSH for “Toothbrushes” in Class 21; filed on April 13, 2005 by Michael F. Brice, an individual, having an address at 6 Whitney Lane, Woodbury, New York 11796 (“Applicant”), and hereby opposes the same pursuant to Section 13 of the Trademark Act of 1946 (15 U.S.C. § 1063).

As grounds for its opposition, Opposer states:

1. Opposer is a competitor in the oral care trade and manufactures numerous oral health care products including dental floss, mouth rinse, and toothbrushes under a variety of trademarks including the famous REACH® toothbrushes.
2. Opposer over the years has sold many millions of dollars worth of toothbrushes in the United States and throughout the world either to the general public or to its customers, which, in turn have sold such products to the general public.

3. Opposer has extensively advertised its oral health care products and toothbrushes to the trade and to the general public in various media, including national print publications and television, and point-of-sale advertising in regional and national retailers, including mass merchants and via the Internet.
4. On information and belief the terms which Applicant seeks to register as a mark on Principal Register are the merely descriptive term “healthy” and the generic term “toothbrush.”
5. On information and belief the term “healthy” is ubiquitous, widely used throughout the field of oral care to aptly describe the purpose of oral health care goods, and incapable of functioning as a mark.
6. The term “toothbrush” is the generic of the Applicant’s goods.
7. The mark that Applicant seeks to register is merely descriptive because it immediately conveys to the consumer a primary descriptive characteristic of the use of a toothbrush – healthy oral care.
8. On information and belief, the Applicant has not used its mark HEALTHY TOOTHBRUSH in interstate commerce in connection with the goods identified in application Ser. No. 76/635,772 as of the April 13, 2005 filing date of the application.
9. On information and belief, the term HEALTHY TOOTHBRUSH has not acquired secondary meaning and, therefore, is not entitled to registration on the Principal Register.
10. The goods and services on which Opposer uses the its various marks in connection with toothbrushes and the goods for which Applicant intends to use its alleged mark

HEALTHY TOOTHBRUSH mark may be sold or rendered through the same channels of trade to the same class of purchasers.

For the reasons set forth above, Opposer believes and believing asserts that it will be damaged by the registration of Ser. No. 76/635,772 – HEALTHY TOOTHBRUSH. Accordingly, the Opposer prays that this Opposition be sustained, and that the Applicant be refused registration of the HEALTHY TOOTHBRUSH mark for the goods set forth in application Ser. No. 76/635,772.

Please charge the \$300.00 filing fee to the deposit account of Opposer's counsel, No. 50-0573.

Respectfully submitted,

JOHNSON & JOHNSON

By: 

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